

Appln No. 10/618,033
Amdt date January 14, 2010
Reply to Office action of July 14, 2009

REMARKS/ARGUMENTS

As a preliminary matter, Applicant notes that the previous amendment filed on October 14, 2009 was not entered, as noted in the Advisory action dated December 15, 2009. As such, the amendments presented in this paper reflect changes to the claims presented prior to that amendment, i.e., the claims presented in the amendment filed on March 26, 2009.

In the Final rejection dated July 14, 2009 and Advisory action dated December 15, 2009, the Examiner rejected claims 1, 3, 4, 7, 8, 13, 14 and 15 under 35 U.S.C. §102(b) as allegedly anticipated by Selmon, et al. (U.S. Patent No. 6,638,247). In making this rejection, the examiner points to Figures 3-6 and 14D as support for the contention that Selmon discloses a generally rigid tube extending distally from the segmented surface and having a sharp distal end adapted to puncture tissue. Although Applicant disagrees, and without conceding this point, Applicant has canceled independent claim 1, and drafted new independent claim 25 reciting, *inter alia*, "a segmented surface comprising a plurality of segments...configured to move between a closed configuration in which the segments combine to form the segmented surface and an open configuration in which the segments separate from one another," and "a plurality of generally rigid tube segments...wherein, when the plurality of segments is in the closed configuration, the plurality of tube segments combine to form a generally rigid tube having a sharp distal end configured to puncture tissue." Similarly, Applicant has canceled independent claim 18 and drafted new claim 26 reciting, *inter alia*, "a segmented surface comprising three or more segments...configured to move between a closed configuration in which the segments combine to form the segmented surface and an open configuration in which the segments separate from one another," and "a plurality of generally rigid tube segments...wherein, when the three or more segments are in the closed configuration, the plurality of tube segments combine to form a generally rigid tube having a sharp distal end configured to puncture tissue." Selmon fails to teach or suggest these features. For example, Selmon fails to disclose that a plurality of generally rigid tube segments combine to form a generally rigid tube having a sharp distal end configured to puncture tissue. Instead, Selmon appears to disclose *blunt end* members and *blunt end* jaw members, none of which combine to form a generally rigid tube. Column 8, lines 58-60;

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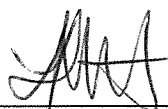
column 11, lines 5-8 and 31-33; column 12, lines 53-56. Accordingly, independent claims 25 and 26, and all claims dependent therefrom, including claims are allowable over Selmon.

The Examiner also rejected claims 9-12, 14-19, 23 and 24 under 35 U.S.C. §103(a) as allegedly obvious over Selmon either alone or in combination with one or more of Wallace (U.S. Patent No. 6,254,628) and Devos, et al. (U.S. Patent No. 6,099,511). However, independent claims 25 and 26 are allowable over Selmon, as discussed above. Neither Wallace nor Devos remedy the deficiencies of Selmon, as none of the references, either alone or in combination, teaches or suggests all the elements of independent claims 25 and 26. Therefore, independent claims 25 and 26, and all claims dependent therefrom, including claims 9-12, 14-17, 19, 23 and 24, are allowable over Selmon, Wallace and Devos.

Claims 3, 4, 7, 9-17, 19 and 23-26 are now pending in this application. By this amendment, applicant has canceled claims 1, 8 and 18, added new independent claims 25 and 26, and amended claims 3, 4, 7, 9-14, 16, 17, 19, 23 and 24 to correct the dependencies of those claims in light of the cancellation of base claims 1 and 18 and to be consistent with new base claims 25 and 26. Applicant has drafted independent claims 25 and 26 to exclude limitations in original claims 1 and 18 that are not necessary for patentability over the cited references, and to place the claims in condition for allowance. In view of the above amendments and remarks, applicant submits that all of pending claims 3, 4, 7, 9-17, 19 and 23-26 are in condition for allowance. Applicant therefore respectfully requests reconsideration and a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, Applicant invites the Examiner to contact Applicant's counsel at the number indicated below.

Respectfully submitted,

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